

AB 2838 (Canciamilla) - Water rates.

As Amended April 1, 2002

Recommendation: Oppose

Summary:

This bill:

- Puts into effect any rate increase proposal filed by a water corporation after 214 days (in the case of a general rate increase application) or after 40 days (in the case of an advice letter), "...on an interim basis subject to refund." Proposed PU Code section 455.2(a).
- Requires that any notice of reasons why the utility proposal is not just and reasonable be made by the CPUC staff within 99 days or 30 days, respectively, along with a specific statement of measures that would affirmatively make the utility rate schedule just and reasonable. Proposed PU Code section 455.2(b).
- Permits the utility to file a "revised schedule" adopting the staff recommendations within ten (10) days, which will then become effective on an interim basis not subject to refund. Proposed PU Code section 455.2(b).
- Provides for a hearing "on the application or advice letter" if the CPUC staff has filed the notice, after which the "revised schedule" may be made final. Proposed PU Code section 455.2(c).

Analysis

Under existing law, the CPUC must establish just and reasonable rates (PU Code section 451) and may not adjust rates except after notice and upon a showing and a finding by the commission that the adjustment is justified (PU Code section 454.) The CPUC must fix rates once it has determined, after a hearing, that an existing rate is insufficient or unjustified. (PU Code section 728.) The CPUC may determine by rule the nature of the showing for each class of utility. PU Code section 454(b).

Pursuant to these statutory authorizations the CPUC has established a rate case procedure for water corporations that permits them to apply for rate increases at a time and in a manner of their choosing, and grants them considerable flexibility in designing the content of their initial applications. The extent of financial, operational and cost disclosure is within the discretion of the water utility in the first instance. The application is then subject to investigation, hearing, public participation and comment, analysis and decision processes in accordance with statute and the Commission's rules of practice and procedure.

Unlike rate applications in the energy industry, under current CPUC practice water utilities are not required to make applications on a regular schedule, so that they may avoid an application during times when – due to declining costs -- rate decreases might be the appropriate outcome.

This bill proposes a legislative mandate for utility water rate increases by putting rate increase applications into effect automatically without findings, hearings or decision by the commission. The mandated increase would be placed into effect subject to refund if the commission had not

acted on the application within 214 days (in the case of a general rate increase) or 40 days (in the case of specific cost pass-throughs). The mandated increase would be placed into effect not subject to refund if the utility complies with recommendations made by the CPUC staff after a cursory review (99 days in the case of a general rate increase, 30 days in the case of the specific cost pass-through.)

In all cases, under the bill CPUC staff is limited to the cursory review (99 days and 30 days) if it wishes to provide an opportunity for public hearing, and it must specify to the utility "...all changes to the [utility proposal] required to make it just and reasonable." This effectively places the burden of proof on the CPUC staff.

The bill is ambiguous as to whether the CPUC may hold hearings and conduct proceedings in its accustomed manner pursuant to its rules if the staff does not provide the notice and recommendations within the required times. A plausible, but not required, reading of the bill is that the failure to provide the notice and recommendations within the required time (under 455.2(b)) converts the "interim" automatic rate increase, under 455.2(a) to a final order 214 days after the filing of the application, or 40 days after the filing of an advice letter. (No hearing or proceedings on application would be permitted under 455.2(c).)

If the 99 and 30 day reviews are not to be cursory, Water Division will need a substantial increase in staff and the CPUC will have to significantly augment the reporting and accounting requirements for water utilities, so that costs, earnings, financing and operations are transparent to the CPUC and its staff for all water corporations, and information can be obtained and analyzed without obstruction, obfuscation or delay. The mandated timelines for decision will require increasing the ALJ and decision support staff dedicated to water cases.

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Date: April 15, 2002

Bill Language

BILL NUMBER: AB 2838 AMENDED

BILL TEXT

AMENDED IN ASSEMBLY APRIL 1, 2002

INTRODUCED BY Assembly Member ~~Kelley~~
Canciamilla

FEBRUARY 25, 2002

An act to add Section 455.2 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2838, as amended, ~~Kelley~~ *Canciamilla*

. Water rates.

Existing law requires the Public Utilities Commission to establish rates for water corporations.

This bill would require the commission to follow a certain procedure when a water corporation files with the commission, pursuant to the commission's rate case plan for general rate increase applications or pursuant to an advice letter submitted in accordance with commission procedures, a schedule stating rates, classifications, contracts, practices, or rules for the service of water.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Water corporations are currently faced with and will continue to be faced with the following:

(1) The need to devote ever increasing resources, time, and capital to secure and protect their public water supplies and public water systems from sabotage, infection, contamination, damage, or interference by terrorists, or threats of terrorists.

(2) The need to design, construct, and operate water system infrastructure, plants, and facilities, using the best available technologies, to comply with increasingly stringent state and federal safe drinking water laws and resolutions.

(3) The need to develop new sources of supply, make existing sources of supply safe, secure, and more reliable, and encourage and implement water conservation measures, including water reclamation and reuse.

(4) The need to replace or upgrade water infrastructure, plants,

and facilities to meet the governing fire flow standards for public fire protection purposes and to protect the public health and safety.

(b) The ~~California~~ Public Utilities Commission needs to act timely in making determinations and establishing rates for water service so that ~~the~~ water corporations can meet their obligation to provide their ratepayers with safe, secure, and reliable water service.

SEC. 2. Section 455.2 is added to the Public Utilities Code, to read:

455.2. Whenever a water corporation files with the commission, pursuant to the commission's rate case plan for general rate increase applications or pursuant to an advice letter submitted in accordance with commission procedures for this means of submission, a schedule stating rates, classifications, contracts, practices, or rules for the service of water, the commission shall observe the following procedures:

(a) Except as provided in subdivisions (b) ~~, (c), and (d)~~ and (c), the schedule, as filed, shall become effective, on an interim basis subject to refund, 214 days following the date the application was filed pursuant to the commission's rate case plan for general rate increase applications or 40 days following the filing of the schedule pursuant to an advice letter.

(b) If, upon its own initiative, the commission, acting through the staff organization with responsibility for reviewing general rate case applications or advice letter filings, determines that the schedule filed by a water corporation is not justified, it shall notify the water corporation of the determination in writing 99 days from the date of filing of an application and 30 days from the date of filing of the schedule pursuant to an advice letter and shall state in the notice all changes to the schedule that are required to make it just and reasonable in the opinion of the staff organization.

Upon the filing of a revised schedule by the water corporation within 10 days of receipt of the notice from the commission, acting through the staff organization, incorporating all changes specified in the notice, the revised schedule shall become effective, on an interim basis not subject to refund, upon the expiration of five days from the date of the refiling.

~~—(c) If a water corporation does not file a revised schedule incorporating all changes specified in the notice of changes as provided in subdivision (b), the schedule as filed shall become effective on an interim basis, upon the expiration of 30 days from the date of filing of the notice, subject to refund of any amount of the rate subsequently found by the commission to be in excess of a just and reasonable rate.~~

~~—(d)~~

(c) If the commission, acting through the staff organization, files a notice of changes as provided in subdivision (b), the commission shall set the matter for a hearing on the application or advice letter to be held within a reasonable time from the date of the notice. The revised schedule shall become final upon commission action approving the revised schedule or otherwise as the commission finds to be just and reasonable.

